

Filed 1/25/19 P. v. Gratton CA2/5  
Opinion following transfer from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and  
Respondent,

v.

RICHARD ALAN  
GRATTON,

Defendant and  
Appellant.

B262219

(Los Angeles County  
Super. Ct. No.  
MA053037)

APPEAL from judgment of the Superior Court of Los Angeles County, Christopher G. Estes, Judge. Affirmed.

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior

Assistant Attorney General, Mary Sanchez, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant and appellant Richard Gratton appeals the trial court's order denying his motion to reduce the sentence in his 2012 conviction due to the post-sentencing reclassification of three prior felony convictions to misdemeanors. Gratton alleges the reclassification of his prior convictions negates the basis for three 1-year enhancements imposed in 2012 pursuant to Penal Code § 667.5, subdivision (b).<sup>1</sup> We affirm the trial court's order.

## **PROCEEDINGS**

On January 4, 2012, Gratton was sentenced to 10 years 8 months in prison, including six 1-year terms based on the findings that he had served six prior prison terms within the meaning of section 667.5, subdivision (b), two of which are at issue in the present case.<sup>2</sup> (Case Nos. MA049409 and MA046393.) Gratton timely appealed. We recalculated his

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Although Gratton asserts otherwise, the trial court did not base any of the section 667.5, subdivision (b) enhancements on Case No. MA008867.

presentence custody credits, but otherwise affirmed the judgment. (*People v. Gratton* (Mar. 12, 2013, B238493) [nonpub. opn.].) The remittitur issued on June 27, 2013.<sup>3</sup>

Over a year later, on November 4, 2014, California voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (Proposition 47), which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a); *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reduced certain felonies to misdemeanors for eligible offenders. (*People v. Abdallah* (2016) 246 Cal.App.4th 736, 743–744.) Once a prior felony has either been recalled and resentenced or redesignated under Proposition 47, it “shall be considered a misdemeanor for all purposes” with exceptions not applicable here. (§ 1170.18, subd. (k).)

Sometime after Proposition 47 became effective, Gratton filed several section 1170.18 petitions, including petitions to reduce his prior felony convictions in Case Nos. MA008867, MA049409, and MA046393 to misdemeanors. The trial court granted petitions to redesignate all three convictions.<sup>4</sup>

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<sup>3</sup> We judicially noticed the record on appeal in the 2012 case as well as the superior court file. (*People v. Gratton* (Mar. 10 & Apr. 27, 2015, B262219) [nonpub. orders].)

<sup>4</sup> Our record does not contain the petitions or records of the hearings that led to the redesignation of the felony convictions in Case Nos. MA008867, MA049409, and MA046393 as misdemeanors. The only enlightening

On January 13, 2015, defendant filed another section 1170.18 petition. At a hearing on the petition on February 3, 2015, Gratton moved for a reduction of his sentence by three years due to the post-sentencing reclassification of his convictions, which he alleged negated the basis for three of the section 667.5, subdivision (b) enhancements imposed in 2012. The trial court orally denied the motion. Gratton appealed, and we dismissed the appeal on the basis that we lacked jurisdiction.

The California Supreme Court granted review and transferred the case back to us with directions to vacate our decision and reconsider the cause in light of *People v. Buycks* (2018) 5 Cal.5th 857 (*Buycks*), which held that “a successful Proposition 47 petitioner may subsequently challenge, under subdivision (k) of section 1170.18, any felony-based enhancement that is based on that previously designated felony, now reduced to misdemeanor, *so long as the judgment containing the enhancement was not final when Proposition 47 took effect.*” (*Id.* at p. 879, italics added.) We vacated our original decision in compliance with the Supreme Court’s direction.

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information contained in the record is the trial court’s statement at the February 3, 2015 hearing on Gratton’s section 1170.8 petition filed on January 13, 2015 that these three prior convictions had previously been reduced pursuant to Proposition 47. The parties do not dispute the fact of these prior reductions.

## DISCUSSION

We have reconsidered the cause and now affirm the trial court's order.<sup>5</sup> *Buycks* clearly states that the retroactivity of Proposition 47 to strike sentencing enhancements based on felonies that have been reduced to misdemeanors extends only to cases in which the judgment containing the enhancements was not yet final prior to Proposition 47's effective date. The judgment in Gratton's 2012 conviction became final in 2013, well before the effective date of Proposition 47 in 2014. The trial court lacked authority to grant Gratton's request to strike the prior prison term enhancements, which were properly imposed in 2012.

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<sup>5</sup> A post-judgment order "affecting the substantial rights of the party" is an appealable order. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 600; § 1237, subd. (b).)

## **DISPOSITION**

The order is affirmed.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.